

**CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM  
BOARD OF ADMINISTRATION  
LINCOLN PLAZA, 400 P STREET  
SACRAMENTO, CA 95814**

May 24, 2004

**NOTICE OF MODIFICATION TO  
TEXT OF PROPOSED REGULATIONS**

Pursuant to the requirements of Government Code section 11346.8 (c), and section 44 of Title 1 of the California Code of Regulations, the CalPERS Board of Administration is providing notice of changes made to proposed regulations, section 599.517 of Title 2 of the California Code of Regulations, which was the subject of a Notice of Proposed Regulatory Action published March 26, 2004, in the California Regulatory Notice Register, Register 2004, No. 13-Z.

If you have comments regarding the proposed changes, the Board will accept written comments between May 25, 2004 and June 8, 2004. All written comments must be submitted to the Board no later than 5:00 p.m. on June 8, 2004, and addressed to:

Marilyn Clark, Regulations Coordinator  
California Public Employees' Retirement System  
400 P Street, Room 1120  
P.O. Box 942702  
Sacramento, CA 94229-2702

All written comments received by June 8, 2004, which pertain to the indicated changes will be reviewed and responded to by the Board's staff as part of the compilation of the rulemaking file. Please limit your comments to the modifications to the text.

Title 2. California Public Employees' Retirement System

NOTICE OF PROPOSED REGULATORY ACTION

**Section 599.517. Termination of Enrollment in Basic Health Benefits Plan for Failure to Enroll In Part A and Part B of Medicare**

Except as otherwise provided under federal law or regulation, specified employees, annuitants and their family members who, on or after January 1, 1985, become Medicare-eligible, as defined below, may not be enrolled in a basic health benefits plan. Failure of a Medicare-eligible basic plan member to enroll in Part B of Medicare and in a Medicare Plan will result in termination of basic plan coverage.

(a) As used in this section and in Government Code section 22819:

(1) "Post-1997 Basic Health Plan Enrollees" means those annuitants and their family members who (a) have been continuously enrolled in a basic health benefits plan on or after January 1, 1998, and (b) turned 65 on or after January 1, 1998 and before January 1, 2005.

(2) "Post-2000 CSU Basic Health Plan Enrollees" means those annuitants of the California State University and their family members who (a) have been continuously enrolled in a basic health benefits plan on or after January 1, 2001, and (b) turned 65 on or after January 1, 2001 and before January 1, 2005.

(3)(2) "Prospective Medicare Beneficiary" means an annuitant, employee or family member who is enrolled in a basic health benefits plan and, at the time of notification hereunder, is within the Medicare Initial Enrollment Period.

(4) (3) "Medicare-Eligible" means eligible for Medicare Part A without cost and Part B.

(5) (4) "Medicare Plan" means a Medicare supplement or Medicare-risk health benefits plan approved or contracted for by the board.

(6) (5) "Deferral of Part B Enrollment" means deferral of Part B enrollment by a Medicare-eligible state or a contracting agency employee who, pursuant to federal law and regulations, has deferred enrollment in Part B of Medicare because he or she is actively employed and covered by a basic health benefits plan by virtue of that employment.

(b) Enrollment and continuation in a basic health benefits plan.

- (1) Except as set forth below, Post-1997 Basic Health Plan Enrollees, Post-2000 CSU Basic Health Plan Enrollees, and Prospective Medicare Beneficiaries who are Medicare-eligible may not continue to be enrolled in a basic health benefits plan.
- (2) A Medicare-eligible individual who applies for initial enrollment in a basic health benefits plan, or re-enrollment after a break in coverage, shall not be permitted to enroll in a basic plan notwithstanding the fact that he or she was enrolled in an employer-sponsored basic health plan prior to, or on the date of, the application for enrollment.
- (3) A Medicare-eligible state or contracting agency employee who has deferred his or her enrollment in Part B, may continue to be enrolled in a basic health benefits plan until the earlier of retirement or termination of employment. Such employee must notify the Board immediately upon termination of his or her deferred status and must enroll in Part B of Medicare during his or her special enrollment period.

(c) Notice of Requirement to Enroll in Medicare.

- (1) Post-1997 Basic Health Plan Enrollees and Post-2000 CSU Basic Health Plan Enrollees. No later than December 1, 2004, the Board shall provide notice to Post-1997 Basic Health Plan Enrollees and Post-2000 CSU Basic Health Plan Enrollees of their requirement to enroll in Part B of Medicare. This notice shall provide that (a) if they are Medicare-eligible they may not remain in a basic plan, (b) if they are eligible for Part A of Medicare without cost, they must enroll in Part B of Medicare and in a Medicare Plan in order to retain health plan coverage; and (c) the failure to provide the board with satisfactory evidence of enrollment in Part B, ineligibility for Part A without cost, or deferral of Part B enrollment will result in the termination of their basic plan enrollment.
- (2) Prospective Medicare Beneficiaries. Commencing four (4) months prior to a Prospective Medicare Beneficiary's 65<sup>th</sup> birth month, the Board shall provide notice of the requirement to enroll in Medicare. This notice shall inform the Prospective Medicare Beneficiary that if he or she is Medicare-eligible, he or she may not remain in a basic health benefits plan and must timely enroll in Part B of Medicare and a Medicare Plan in order to retain health plan coverage. The notice shall also inform the Prospective Medicare Beneficiary that failure to provide the board with satisfactory evidence of enrollment in Part B, ineligibility for Part A of Medicare without cost, or deferral of Part B enrollment will result in the termination of his or her basic plan enrollment.

(d) Termination of enrollment in a basic health benefits plan.

- (1) On or before March 31, 2005, Post-1997 Basic Health Plan Enrollees and Post-2000 CSU Basic Health Plan Enrollees shall provide the Board with satisfactory evidence of application for enrollment in Part B of Medicare during the 2005 Medicare open enrollment period, ineligibility for enrollment in Part A of Medicare without cost, or deferral of Part B enrollment. Failure to do so will result in termination of basic plan enrollment effective April 1, 2005.
- (2) On or before June 1, 2005, a Post-1997 Basic Health Plan Enrollee or a Post-2000 CSU Basic Health Plan Enrollee who applied to enroll in Part B of Medicare during the 2005 open enrollment period shall provide the Board with satisfactory evidence of enrollment in Part B of Medicare and an application for enrollment in a Medicare plan. Failure to do so will result in termination of basic plan enrollment effective July 1, 2005.
- (3) The basic plan enrollment of a Prospective Medicare Beneficiary who fails to provide to the Board satisfactory evidence of enrollment in Part B of Medicare, ineligibility for Part A of Medicare without cost, or deferral of Part B enrollment by the last day of his or her birth month, will be terminated effective the first of the subsequent month.
- (4) To the full extent permitted by law, the Board shall have no liability for any costs, losses or damages incurred by any person as a result of, or arising from or related to, the termination of basic health benefits plan coverage in accordance with this section.

(e) Enrollment in a Supplemental Plan.

- (1) Post-1997 Basic Health Plan Enrollees, Post-2000 CSU Basic Health Plan Enrollees, and Prospective Medicare Beneficiaries who are Medicare-eligible may enroll in a Medicare Plan by submitting an application to the Board and proof of enrollment in Parts A and B of Medicare. Enrollment in the Medicare Plan shall be effective on the date Medicare coverage became effective or the first of the month following receipt of the application, whichever is later.
- (2) Notwithstanding (1) above, a person whose coverage has been terminated pursuant to subsection (d) and who subsequently submits evidence of enrollment in Parts A and B of Medicare may only enroll in a Medicare Plan under the following conditions:
  - (A) If the application and proof of enrollment in Parts A and B of Medicare are submitted within 90 days of the date that basic plan

coverage terminated, enrollment in the Medicare Plan shall be retroactive to the effective date of Medicare coverage or a date 90 days prior to the submission of evidence of Medicare enrollment, whichever is later.

(B) If the application and proof of enrollment in Parts A and B of Medicare are submitted more than 90 days after the date that basic plan coverage terminated, the effective date of enrollment shall be the first of the month following receipt of the application or, if applicable, the effective date of coverage under open enrollment.

(f) Enrollment in a basic health benefits plan after termination.

If a person whose basic plan coverage has been terminated pursuant to subsection (d) subsequently submits satisfactory written confirmation that he or she is either not eligible for Part A of Medicare without cost or has deferred enrollment in Part B of Medicare, he or she may enroll in a basic health benefits plan under the following conditions:

- (1) If the documentation is received by the Board within 90 days of the date that coverage terminated, re-enrollment in a basic plan shall be retroactive to the date coverage terminated.
- (2) An application for enrollment received more than 90 days after basic plan coverage has terminated may be submitted only during a CalPERS Health Benefits Open Enrollment period.

(g) Request for administrative review – termination of enrollment in basic health benefits plan.

- (1) A person who has been notified that his or her enrollment in a basic plan has, or will be, terminated pursuant to subsection (d), may request an administrative review of the termination. The filing of a request for administrative review shall not delay the termination of basic plan enrollment.
- (2) A request for administrative review must be filed with the Health Branch Assistant Executive Officer within 90 days of the termination date or the date of the notice of termination, whichever is later. The request for administrative review shall be in writing, state the grounds on which it is requested, the relief that is sought, and include all supporting evidence.
- (3) The Health Branch Assistant Executive Officer or his or her designee shall acknowledge the request within 15 days of receipt. The Health Branch Assistant Executive Officer or his or her designee shall review the request

and may request additional documentation. Written notification of the decision shall be mailed within 60 days of receipt of all pertinent information.

(h) Request for administrative review – effective date of Medicare Plan enrollment.

(1) A person whose enrollment in a Medicare Plan is delayed pursuant to subsection (e)(2)(B) due to failure to timely submit evidence of enrollment in Part B of Medicare, may seek administrative review of the basis for the delayed effective date. The filing of a request for administrative review shall not delay the termination of basic plan enrollment.

(2) A request for administrative review must be filed with the Health Branch Assistant Executive Officer within 90 days of the notice of the effective date of enrollment in the Medicare Plan. The request for administrative review shall be in writing, state the grounds on which it is requested, the relief that is sought, and include all supporting evidence.

(3) The Health Branch Assistant Executive Officer or his or her designee shall acknowledge the request within 15 days of receipt. The Health Branch Assistant Executive Officer or his or her designee shall review the request and may request additional information. Written notification of the decision shall be mailed within 60 days of receipt of all pertinent information.

NOTE: Authority cited: Sections 22773 and 22775, Government Code  
Reference: Section 22819, Government Code